

ALABAMA CREDIT UNION ADMINISTRATION
MONTGOMERY, ALABAMA

_____)	
In the Matter of)	
NEW HORIZONS CREDIT UNION)	ORDER TO
MOBILE, ALABAMA)	CEASE AND DESIST
(Insured State Credit Union))	
Charter No: 60799)	2017: 002
_____)	

The Alabama Credit Union Administration (“Administration”) has supervisory authority over New Horizons Credit Union, Mobile, Alabama (“Credit Union” or “NHCU”). The Administrator (the “Administrator”), with the approval of a majority of the Credit Union Board of the Administration (“Credit Union Board”), may issue an order to cease and desist (“Order”) pursuant to *Code of Alabama*, Section 5-17-8 (1980).

The Administrator and Credit Union Board have found that the Credit Union and/or one or more of the Credit Union’s officers, directors, committee members, or employees (individually and collectively, “Institution-Affiliated Parties”) have engaged in unsafe or unsound practices, violations of law, rule or regulation, and have violated conditions duly imposed in writing by the Administrator; thus leading to the issuance of this Order.

The Administrator and Credit Union Board have determined that the requirements for issuance of an Order under the *Code of Alabama* Section 5-17-8 have been satisfied.

Pursuant to the authority vested by *Code of Alabama* Section 5-17-8, the Administrator hereby orders the following:

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED, that the Credit Union, its Institution-Affiliated Parties, and its successors and assigns, cease and desist from the following unsafe and unsound practices and violations of law, rule, or regulation and from continuing violations of the Letter of Understanding and Agreement dated February 23, 2017 (LUA), specifically:

(a) Failure to comply with full and fair disclosure regulatory provisions by not timely charging off uncollectible loans, resulting in an inaccurate disclosure of assets, members' equity, including the allowance for loan and lease losses account, income, and expenses necessary to present fairly the financial condition and the results of operations of the Credit Union;

(b) Operating with a board of directors ("Board") that has failed to provide adequate supervision over and direction to management of the Credit Union;

(c) Operating with inadequate management that has failed to comply with laws, rules or regulations;

(d) Failure to remediate other significant and/or material deficiencies as provided in the Reports of Examination, specifically items 2, 3, 6, 11, 12, and 13 listed in the Document of Resolution Status Report included in the March 31, 2017 Report of Examination;

(e) Failure to comply with the LUA specifically: Corporate Governance 1 (a) v, vi, and viii, 1(b), 2, 3, and II. Credit Risk 5;

(f) Operating with capital that is categorized as "adequately capitalized," as defined pursuant to 12 U.S.C. 1790d, Prompt Corrective Action;

- (g) Ineffective credit risk management practice and poor loan underwriting practices that resulted in poor asset quality and high net charge offs;
- (h) Failure to timely charge off uncollectible loans; and,
- (i) Failure to follow Generally Accepted Accounting Principles in the allowance for loan losses calculation.

IT IS FURTHER ORDERED, that the Credit Union, its Institution-Affiliated Parties, and its successors and assigns, take affirmative action as follows:

I. CORPORATE GOVERNANCE

1. Board of Directors

(a) As of the effective date of this Order, the Board shall improve oversight of the affairs of the Credit Union, assuming full responsibility for the approval of sound policies, procedures and objectives for the supervision of all of the Credit Union's activities, consistent with the role and expertise commonly expected for directors of financial institutions of comparable size. This improved oversight shall include meetings to be held not less frequently than monthly at which, at a minimum, the following areas shall be reviewed and approved: delinquency reports and delinquency trends (30+ days); collection activity reports; extensions; repossessions and other real estate, including current valuations; compliance with Prompt Corrective Action regulatory requirements; net worth trends; adoptions of policies; and compliance with and/or remediation of these concerns.

(b) By the timeframes outlined in the LUA, and Reports of Examination, the Board must provide oversight to ensure management adequately addresses the concerns noted in the LUA, Reports of Examination, including the Document(s) of Resolution (DORs), Examiner's Findings, Loan Exceptions, and such other third party audit reports. This includes any future

LUA, Report of Examination or follow-up examination report(s) by ACUA and NCUA and third party audit related reports. Board meeting minutes shall document these reviews and any approvals, including the action taken by each director with respect to each agenda item.

(c) The Board must review every loan over 90 days past due and obtain an explanation from management regarding why any loan over 90 days past due is either not charged off, the collateral repossessed or the collateral is not in the process of repossession. The Board must enforce the Credit Union's Charge Off Policy.

(d) The Board must hold management accountable for complying with this Order and ensuring the financial statements reflect the financial condition and results of operations of NHCU.

2. Director's Committee

(a) The Directors' Committee shall review and oversee NHCU's action(s) with respect to compliance with this Order, LUA(s), and all Reports of Examination. The Directors' Committee shall present a report detailing NHCU's compliance with this Order, the LUA(s), and Reports of Examination at each regularly scheduled Board meeting. Such report shall be recorded in the appropriate minutes of the Board's meetings and shall be retained in NHCU's records. The establishment and functions of this committee do not in any way diminish the responsibility of the entire Board to ensure compliance with the provisions of this Order, LUA(s) and Reports of Examination.

(b) The Directors Committee must evaluate other credit unions for the sole purpose of merging NHCU to protect the interests of the members of NHCU. Neither the CEO nor any other officer or employee of NHCU may participate in any merger discussions or reports on the results of merger discussions. Such evaluation must be reported to the Board and documented in the

Board meeting minutes. The dual responsibilities of the Directors' Committee shall be specific to the following:

(i) The Directors' Committee shall identify at least three potential merger partners that have a robust infrastructure to properly underwrite loans, manage credit risk and collect past due/problem loans. Those merger partners are expected to be the surviving credit union in a merger with NHCU. The Directors Committee shall engage in merger discussions with the chairman and/or chief executive officer of those credit unions. The results of those meetings shall be reported to the Board in writing on or before **October 1, 2017**, with a copy to the Administration.

(ii) The Director's Committee may not delegate the responsibility or authority to perform this function.

II. CAPITAL ADEQUACY AND PROMPT CORRECTIVE ACTION

(a) NHCU is no longer "well capitalized", and is therefore required under Prompt Corrective Action to modify its business model to achieve profitability at a level necessary to restore the net worth ratio to at least 7 percent of assets as of each quarterly reporting period.

(b) To comply with Part 702, Capital Adequacy, management and officials must achieve profitability sufficient to make at least a quarterly reserve transfer of 1/10th of 1 percent of assets quarterly (beginning September 30, 2017) until net worth is at a level to be considered well-capitalized (7 percent or greater).

(c) Management and officials shall adopt a comprehensive strategic plan that is in the best interests of the members, subject to monthly evaluation by the Board to ensure compliance with the Capital Adequacy requirements addressed in NCUA's Rules and Regulations, Part 702.

Financial statement forecasts and assumptions must be reasonable and reflect achievable results of NHCUCU.

III. CREDIT RISK AND COMPLIANCE RISK

(a) NHCUCU holds and continues to hold uncollectible loans on its balance sheet that meet or exceed one or more conditions for charge-off recognition as set forth in the credit union's policies and existing regulatory guidance under NCUA Rules and Regulations, Part 741. This action understates loan losses, understates the ALLL funding and overstates earnings and net worth, causing inaccurate presentation of financial condition. NHCUCU should account for such losses in accordance with Part 741 of the NCUA Rules and Regulations (12 C.F.R. 741.3), including Appendix C, *Interpretive Ruling and Policy Statement on Loan Workouts and Non Accrual Policy, and Regulatory Reporting of Troubled Debt Restructure Loans*. See Supervisory Letters No. 13-02 and 03-CU-01.

In order to comply with these requirements:

- (i) Management must document why all loans greater than 90 days past due are not charged off, the collateral repossessed or the collateral is not in the process of repossession or foreclosure;
- (ii) The Credit Union must immediately charge off all existing loans that meet or exceed NHCUCU's Charge Off Policy;
- (iii) The Credit Union must charge off on a monthly basis all loans that, subsequent to the date of this Order to Cease and Desist, meet or exceed NHCUCU's Charge Off Policy;

(iv) The Credit Union must re-calculate its Allowance for Loan and Lease Losses (ALLL), using 12 months' net charge off ratio for automobile loans after item (ii) above is completed and monthly thereafter;

(v) Eliminate the impaired loan portion of the ALLL calculation for vehicle loans, credit cards and other small balance consumer loans and correctly apply the guidance of ASC 310-10-35, which provides that an impairment analysis is separately performed for larger non-homogeneous loans (typically business, agriculture, or large real estate loans exhibiting higher risk). Large groups of small balance homogenous loans (consumer loans, autos, personal loans, etc.) are not included in the scope of ASC 310-10-35; and

(vi) The Credit Union must fund its ALLL account according to the revised ALLL calculation after consideration of items ii, iii, iv and v above.

IV. PROGRESS REPORTS

Within 30 days from the end of each month, the Credit Union is required to furnish written progress reports to the Administration detailing the form and manner of any actions taken to secure compliance with this Order and the results thereof. Such progress reports of compliance with this Order to Cease and Desist must be reviewed by the Board monthly and such review must be documented in the minutes of the meetings of the Board and provided to the Administration and NCUA. NHCU should continue to provide progress reports of its compliance with the LUA and all Reports of Examination to the Administration and NCUA; and

Such reports shall include copies of the board minutes, financial statements (balance sheet and income statement), delinquent loan lists, general ledger detail showing monthly charge offs and recoveries, detailed report of the Board's review of loans greater than 90 days past due and documentation of the Board's review of action by management to address

the concerns noted in the LUA, Reports of Examination, including Documents of Resolution (DORs), Examiner's Findings, Loan Exceptions, third-party audit reports AIREs Downloads, and other documents upon request to ACUA and/or NCUA at the addresses provided in the Report of Examination. All progress reports and other written responses to this Order shall be reviewed and approved by the Board and made a part of the appropriate Board meeting minutes and shall be subject to *Code of Alabama* Section 5-17-32.

V. GENERAL PROVISIONS

All actions required of the Board, Directors Committee or Supervisory Committee hereunder shall be approved in writing by the Board, Directors Committee or Supervisory Committee, as applicable, and the actions and votes of each Board or Committee member shall be recorded and maintained.

The provisions of this Order shall not bar, estop, or otherwise prevent the Administration or any other federal or state agency or department from taking any other action against the Credit Union.

The Credit Union is in troubled condition. As such, the Credit Union must comply with Section 212 of the Federal Credit Union Act (12 U.S.C. 1790a) and NCUA Rules and Regulations Parts 741 and 750, Sections 741.205, 750.0 and 750.4 (*12 C.F.R. §§ 741.205, 750.0 and 750.4*). The Credit Union shall notify the Administration and NCUA in advance in writing of any changes in the composition of senior management or the Board of Directors or the Supervisory Committee within ten (10) days of the change and submit for approval any new, qualified applicant to fill a vacant position. Also, any severance payments or termination compensation under the CEO's employment contract must be preapproved by NCUA and the

Administration in accordance with NCUA Regulation 750.0 (defining golden parachute payments and limiting payment by institutions in troubled condition) and 750.4 (allowing payments with approval of NCUA and the Administration).

The Administrator, with the approval of a majority of the Credit Union Board, *ex parte* and without notice, may appoint the Administration as conservator and immediately take possession and control of the business and assets of the Credit Union in any case in which any one of the following occurs:

1. The Administration determines that the action is necessary to conserve the assets of the Credit Union or the interests of the members of the Credit Union.
2. The Credit Union, by resolution of its board of directors, consents to the action by the Administration.
3. There is a willful violation of this Order after it is final.
4. There is concealment of books, papers, records, or assets of the Credit Union or refusal to submit books, papers, records, or affairs of the Credit Union for inspection to any examiner or to any lawful agent of the Administration.

This Order shall be effective ten (10) days after it is delivered to the Credit Union. The provisions of this Order shall be binding upon the Credit Union, its directors, members of the Supervisory Committee, and employees, and any successors and assigns thereof.

The Credit Union shall have ten (10) days from the receipt of this Order to make a written notice of appeal to the Credit Union Board pursuant to *Code of Alabama*, Section 5-17-8 (1980). This Order shall remain in full force and effect during the pendency of any appeal hereof.

The provisions of this Order shall remain effective and enforceable except to the extent that and until such time as any provision has been modified, terminated, suspended, or set aside in writing.

Delivered the 24th day of August 2017.



Carrie Ellis McCollum
Carrie Ellis McCollum
General Counsel
Alabama Credit Union Administration

Effective September 3, 2017.



Sarah H. Moore
Sarah H. Moore
Administrator
Alabama Credit Union Administration